

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GEORGE CARR,

Plaintiff

ANSWER TO COMPLAINT

07 CIV. 11180

JUDGE ROBINSON

-against-

COUNTY OF WESTCHESTER,

Defendant

-----X

Defendant, County of Westchester ("County Defendant"), by its attorney, Charlene M. Indelicato, Westchester County Attorney, Irma W. Cosgriff, Senior Assistant County Attorney, of Counsel, respectfully answers the allegations contained in the Complaint filed December 12, 2007 and alleges as follows:

1. With regard to the allegations contained in paragraph "1" of the Complaint, County Defendant denies knowledge or information sufficient to form a belief as to the truth or accuracy of whether Plaintiff is a resident of the County of Westchester and admits that Plaintiff is employed in the Department of Environmental Facilities.
2. Admits the allegations of fact implicit in the predicate of paragraph "2" of the Complaint and respectfully refers any and all questions of law to this Honorable Court.
3. Admits the allegations contained in paragraph "3" of the Complaint only to the extent that Plaintiff filed a charge with the Equal Employment Opportunity Commission ("EEOC") and respectfully refer any and all questions of law to this Honorable Court.

4. The jurisdictional allegations contained in paragraph “4” of the Complaint constitute conclusions of law to which County Defendant makes no answer save to demand strict proof thereof and respectfully refers all questions of law to this Honorable Court. County Defendant denies any conduct giving rise to a cause of action pursuant to the statutes enumerated herein and denies that Plaintiff is entitled to any relief.

5. Admits the allegations contained in paragraph “5” of the Complaint only to the extent that “Plaintiff is an African American who has long been employed” by defendant. Denies the remaining allegations contained in paragraph “5” of the Complaint.

6. Denies the allegations contained in paragraph “6” of the Complaint but admits that in 2006 Plaintiff sought promotion to the position of Senior Maintenance Mechanic III (TPE).

7. Denies the allegations contained in paragraph “7” of the Complaint and refers any and all questions of law to this Honorable Court.

8. Denies knowledge or information sufficient to form a belief as to what Plaintiff ‘ascertained’ and denies the remaining allegations contained in paragraph “8” of the Complaint.

9. Denies the allegations contained in paragraph “9” of the Complaint

10. Denies the allegations contained in paragraph “10” of the Complaint

11. Admits the allegations contained in paragraph “11” of the Complaint.

12. Denies the allegations contained in paragraph “12” of the Complaint

13. Denies the allegations contained in paragraph “13” of the Complaint

14. Denies the allegations contained in paragraph “14” of the Complaint

15. Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph “15” of the Complaint.

16. Denies knowledge or information sufficient to form a belief as to the truth or accuracy of Plaintiff's "desire", and denied the remaining allegations contained in paragraph "16" of the Complaint except admits that Plaintiff was transferred to Ossining where he remained for less than three days.

17. Denies the allegations contained in paragraph "17" of the Complaint.

18. Denies the allegations contained in paragraph "18" of the Complaint.

19. Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph "19" of the Complaint

20. Denies the allegations contained in paragraph "20" of the Complaint but admits that Plaintiff and others applied for the position of Senior Maintenance Mechanic III (TPE), he and others were not interviewed and another candidate (white) was promoted to that position.

21. Denies the allegations contained in paragraph '21' of the Complaint but admits that the candidate selected for the promotion did not previously work in Peekskill and respectfully refers any and all questions of law to this Honorable Court.

22. Denies the allegations contained in paragraph "22" of the Complaint and respectfully refers any and all questions of law to this Honorable Court.

23. Denies the allegations contained in paragraph "23" of the Complaint and respectfully refers any and all questions of law to this Honorable Court.

24. Denies the allegations contained in paragraph "24" of the Complaint. To the extent that the allegations contained in paragraph "24" constitute conclusions of law, County Defendant makes no answer save to demand strict proof thereof and respectfully refers all questions of law to this Honorable Court.

25. Denies the allegations contained in paragraph “25” of the Complaint. To the extent that the allegations contained in paragraph “25” constitute conclusions of law, County Defendant makes no answer save to demand strict proof thereof and respectfully refers all questions of law to this Honorable Court.

26. Denies the allegations contained in paragraph “26” of the Complaint. To the extent that the allegations contained in paragraph “26” constitute conclusions of law, County Defendant makes no answer save to demand strict proof thereof and respectfully refers all questions of law to this Honorable Court. Further answering, Plaintiff has agreed to withdraw any and all claims brought pursuant to Section 296 of the New York State Executive Law.

FIRST AFFIRMATIVE DEFENSE

27. Plaintiff failed to state a claim upon which relief can be granted pursuant to 42 U.S.C. Section 1983.

SECOND AFFIRMATIVE DEFENSE

28. If Plaintiff suffered any injuries, such injuries were not the result of a pattern, practice or policy of the County and were not the result of any action taken by any employee acting under color of state law.

THIRD AFFIRMATIVE DEFENSE

29. Plaintiff neither alleges nor can he establish any action or inaction which would give rise to a claim pursuant to 42 U.S.C. Section 1983.

FOURTH AFFIRMATIVE DEFENSE

30. Insofar as Plaintiff seeks to impute liability to the County of Westchester, simply because it is alleged to have employed one or more constitutional tortfeasors, this action should be dismissed since the doctrine of *respondeat superior* is not available.

FIFTH AFFIRMATIVE DEFENSE

31. Plaintiff is not entitled to attorney's fees because he has not alleged any cognizable constitutional or federal claim.

SIXTH AFFIRMATIVE DEFENSE

32. Punitive damages are not recoverable as against the County.

SEVENTH AFFIRMATIVE DEFENSE

33. Plaintiff failed to state a claim upon which relief can be granted pursuant to the NYSHRL.

EIGHTH AFFIRMATIVE DEFENSE

34. Plaintiff failed to state a claim upon which relief can be granted pursuant to Title VII.

NINTH AFFIRMATIVE DEFENSE

35. The NYSHRL claim must be dismissed for, *inter alia*, Plaintiff's failure to file a timely Notice of Claim.¹

TENTH AFFIRMATIVE DEFENSE

36. At all times relevant, County Defendant's employment decisions were based upon legitimate non-discriminatory reasons.

ELEVENTH AFFIRMATIVE DEFENSE

37. Plaintiff's EEOC Complaint was not timely filed.

¹ Plaintiff agreed to withdraw any and all claims pursuant to Section 296 of the New York State Executive Law.

TWELFTH AFFIRMATIVE DEFENSE

38. Plaintiff failed to allege and cannot establish a failure to promote claim.

THIRTEENTH AFFIRMATIVE DEFENSE

39. Plaintiff failed to allege and cannot establish a race discrimination claim.

FOURTEENTH AFFIRMATIVE DEFENSE

40. Plaintiff failed to allege and cannot establish a hostile work environment claim.

FIFTENTH AFFIRMATIVE DEFENSE

41. Plaintiff failed to allege and cannot establish a retaliation claim

SIXTEENTH AFFIRMATIVE DEFENSE

42. County Defendant acted in accordance with all applicable laws and regulations.

SEVENTEENTH AFFIRMATIVE DEFENSE

43. Most, if not all, of Plaintiff's claims are barred by the statute of limitations.

EIGHTEENTH AFFIRMATIVE DEFENSE

44. Plaintiff's Title VII claim(s) must be dismissed because he failed to exhaust his administrative remedies.

NINETEENTH AFFIRMATIVE DEFENSE

45. To the extent that there are any cognizable claims under Title VII, any and all constitutional claims must be dismissed as they are preempted by Title VII.

TWENTIETH AFFIRMATIVE DEFENSE

46. Plaintiff was not discriminated against on the basis of race.

TWENTY-FIRST AFFIRMATIVE DEFENSE

47. The Court lacks subject matter jurisdiction over this action.

WHEREFORE, County Defendant demands judgment dismissing the Complaint together with fees, costs and disbursements and for any such other and further relief as this Honorable Court deems just and proper.

Dated: White Plains, New York
February 8, 2008

CHARLENE M. INDELICATO
Westchester County Attorney
Attorney for County Defendant

s/ Irma W. Cosgriff
By: Irma W. Cosgriff (IWC 1326)
Sr. Assistant County Attorney, of Counsel
600 Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601
(914) 285-3577 (914) 995-3132 (fax)

TO Michael H. Sussman, Esq.
Sussman & Watkins
PO Box 1005
Goshen, New York 10924
(845) 294-3991